

DR. M'GUIRE  
TO BE HEAD  
OF COLLEGES  
Plan for Amalgamation  
Proposed Destroys  
Identity.  
HEART TO HEART  
TALK YESTERDAY  
Faculties of Both Institutions  
Hold First Joint Conference,  
and Get Closer Together.  
DRS. HODGES AND TAYLOR  
WERE IN OPPOSITION

But There Has Been a "Change of  
Heart," It is Said, in Faculty  
of University College—Re-  
port Naming Former  
Conditions Likely  
Be Accepted.

That the two colleges should be  
consolidated under the name of the  
"old" college, is the Medical  
College of Virginia.  
That Dr. Stuart McGuire should be  
president of the consolidated colleges;  
That the corporation of the Univer-  
sity College of Medicine should cease  
to exist, and its Board of Trustees  
be abolished;  
That the faculties of the present  
faculties of the two colleges should  
have equal representation in the fac-  
ulty of the consolidated institution;  
That the present Medical College  
of Virginia should retain its name,  
and its buildings should become the  
home of the amalgamated institution.

On such a basis, committees from the  
Medical College of Virginia and the  
University College of Medicine are now at  
work, with a view to the consolidation of  
the two institutions.  
The movement began last fall was given  
wonderful strength by a rather remark-  
able conference of the faculties of both  
institutions, and a few public spirited  
men held yesterday afternoon. From the  
day that Dr. Hunter McGuire, founder  
of the Medical College of Virginia, and  
surrounded himself with a powerful faculty,  
of which his own name was the capstone, keenest  
rivalry has existed between the present  
institution and her remarkably attrac-  
tive and successful daughter. Such a  
thing as a joint meeting of the two fac-  
ulties probably never crossed the mind of  
any man connected with either insti-  
tution until within the last few months.  
But the conference yesterday afternoon  
was characterized by cordiality, hope-  
fulness and admirable give-and-take spirit.

Reached Critical Point.  
But to understand the object of yester-  
day's meeting, some matters never  
before published must be made known.  
When last fall it became evident that  
the Medical College of Virginia and the  
Medical Department of the University  
of Virginia, upon which to find a  
practical basis for a joint session, agreed  
on the proposition already stated and  
that these conditions were accepted with  
practical unanimity by the faculty of  
the Medical College of Virginia, and failed  
of acceptance by one vote only in the  
faculty of the University College of  
Medicine.

Who Opposed It.  
It is understood that Dr. Stuart Mc-  
Guire, the present head of the University  
College, was and is heartily in favor of  
the consolidation, and that important op-  
position came from Drs. Hugh M. Tay-  
lor and J. Allison Hodges. These gen-  
tlemen are said to have held to the  
opinion that competition was best for  
both institutions.  
Upon the failure of the faculty of the  
University College of Medicine to ratify  
the report of the joint committee, the  
matter was temporarily dropped, or, more  
appropriately speaking, "put to sleep."  
But "missionary work" has been done,  
and certain recent developments have  
brought about a "change of heart," it  
is said. Certain it is that Wednesday  
evening the faculty of the University  
College of Medicine sent an invitation to  
a conference to be held yesterday after-  
noon. "Let us talk it over together,"  
was the motto of the meeting, and this  
was done, with the addresses of several  
prominent men giving new impetus to  
the movement so well under way.

Prominent Men Urge It.  
Colonel John S. Harwood called the  
meeting to order and one of the first an-  
nouncements was to decide that the meeting  
should be held behind closed doors, in ef-  
fect excluding the newspaper men seek-  
ing to report the proceedings, while it was  
expressly agreed that nothing should be  
given out, the good feeling generated and  
cordially expressed there just bubbled  
over and it can be confidently stated that,  
while no definite action was taken yester-  
day and while the meeting was a con-  
ference, polite and simple, without stated  
conclusions, the colleges are far nearer  
now than ever before. A number of the  
leaders on both sides spoke and, be-  
sides these, addresses strongly advocating  
consolidation from the civic and patriotic  
standpoint were made by Judge Barton,  
Dr. S. C. Mitchell, Dr. J. B. Branch,  
Mr. E. L. Bennis, Dr. P. W. Bontly, Judge  
George L. Christian and Colonel  
Harwood.

Gets to Work Again.  
A direct result of conference, however,  
is that the joint committee with Dr. Hugh  
(Continued on Twelfth Page.)



HON. HARRY ST. GEORGE TUCKER.  
who delivered commencement address before the University College of Medicine.

NORFOLK PRIMARY  
CLOSE CONTEST

Fight Between the Old Factions  
to Control City Or-  
ganization.

THE RESULT YET IN DOUBT

Each Side Wins One Member of  
Board of Control and a  
Third Undecided.

(Special to The Times-Dispatch.)  
NORFOLK, VA., May 17.—Norfolk held  
its first election to-day, a Democratic  
primary, under the provisions of the new  
charter granted by the last Legislature.  
The old factions, administrationists or  
"good government" wing, of the party,  
and the anti-administrationists or "ring"  
were aligned against each other. Mem-  
bers of the board of control, Aldermen  
and Councilmen were voted for.  
The Democratic primary is the real elec-  
tion here, and the general election merely  
perfunctory.  
The board of control, which is to con-  
duct the corporations' vast business, is a  
creation of the new charter. It is prob-  
able that the complete vote will not be  
tabulated before morning, but it is cer-  
tain late to-night that the administra-  
tionists will control the Council of Alder-  
men as well as the Council.  
The good government party has elected  
R. Henry Jones to the board of control,  
and the ring, Robert Johnston, with the  
third member in doubt. The fight here is  
between T. S. Purdie, good government,  
and Harry Hodges, ring.  
The anti-administrationists were the ag-  
gressors in the campaign and seemed con-  
fident of winning.  
The administrationists charged that the  
opposition was really the liquor party and  
would run the town wide open if success-  
ful and the fight was on that issue.

EASTERN TRACTION  
MAGNATES COMING

Will Inspect Electric Lines and  
Visit Historic  
Points.

(Special to The Times-Dispatch.)  
LEXINGTON, KY., May 17.—Party of  
Eastern Traction magnates headed by  
Blair McAffee, of Philadelphia, left this  
city to-night over the Chesapeake and  
Ohio Railroad for Virginia, where they  
will spend two days inspecting traction  
lines at Newport News, Norfolk and  
Portsmouth. Party spent day inspecting  
Lexington and Interurban railway  
lines owned and controlled by Chandler  
Bros., of Philadelphia.  
Members of party represent stockholders  
and investors of traction lines securities  
in Indiana, Kentucky and Virginia. Will  
stop at Richmond to visit historic places  
and battlefields of Civil War. Party  
was entertained here by citizens, headed  
by Mayor Thomas A. Combs.

PACIFIC MAIL SUES  
SHIP-BUILDING CO.

Claim Damages for Delay Oc-  
casioned By Necessary Changes  
in the Siberia.

(Special to The Times-Dispatch.)  
NEW YORK, May 17.—The Pacific Mail  
Steamship Company began suit to-day in  
the United States Circuit Court, to re-  
cover \$25,553.33 from the Newport News  
Shipbuilding Company, for violation of a  
contract. In the complaint it is alleged  
that on June 30, 1899, the Newport News  
Shipbuilding Company agreed to build for  
the Pacific Mail Steamship Company, two  
steel steamships. In November, 1902, the  
Siberia, one of the vessels, was turned  
over to the steamship company. A  
trial test it was discovered that the vessel  
was not built in accordance with the  
terms of the contract, and was not fit for  
sea service. These defects were remedied  
by the steamship company at a cost of  
\$10,301.77. The Pacific Mail enters an ad-  
ditional claim of \$33,251.95 for damages,  
because they were deprived of the use  
of the vessel for many months.

GEN'L CONFERENCE  
SEVERAL BISHOPS

Standing Room Was at a Pre-  
mium When the Morning  
Session Began.

DR. ATKINS A COMPROMISE

North Carolinian Receives Honor  
After Twelve Ballots Had  
Been Cast.

(Special to The Times-Dispatch.)  
BIRMINGHAM, ALA., May 17.—Dr.  
John J. Tigert, of the Louisville Confer-  
ence, and Dr. Seth Ward, of the Texas  
Conference, were elected to the office of  
bishops at the general conference of the  
Methodist Episcopal Church, South, this  
morning. Dr. Joseph Atkins, Sunday-  
school editor of the Methodist Episcopal  
Church, South, was elected bishop to-  
night on the twelfth ballot.  
Dr. Tigert was elected on the first bal-  
lot, the vote for him being 19 and Dr.  
Ward was chosen on the third ballot by  
a vote of 140. After the election of Dr.  
Ward, the conference adjourned for din-  
ner, meeting again at 3 o'clock and bal-  
loting until 6 without result, then ad-  
journing to meet at 8 P. M.  
At an early hour this morning at the  
great crowd began to assemble at the  
First Methodist Church, and by the time  
set for the election of three new bishops,  
standing room was at a premium. In  
accordance with an old custom of Meth-  
odism, the conference paused just before  
the election to ask the blessing and  
guidance of the Holy Spirit in the selec-  
tion of men for the office of bishop in  
the Church of God.

The Election Proceeds.

After a hymn, Dr. G. C. Rankin, of  
Texas, led in a fervent prayer. Bishop  
Joseph S. Key, the presiding officer, an-  
nounced the tellers and declared the elec-  
tion of bishops to be in order, instructing  
the delegates to prepare their ballots for  
three men. On the first ballot, 273 votes  
were cast, 137 being necessary to elect.  
The count stood as follows: John G. Ti-  
gert, 190; J. C. Kilgo, 100; Seth Ward, 85;  
Collins Denny, 84; W. H. McMurray, 74;  
James Atkins, 70; W. P. Tillet, 55; W. B.  
Murray, 54.  
Dr. Tigert was declared elected, and the  
second vote was taken, the ballots  
being prepared for two men, the result  
being: J. C. Kilgo, 109; Seth Ward, 96; Collin  
Denny, 88; Tillet, 46; W. B. Murray, 42.—  
No election.

To Educate Negroes.

Two measures of great interest were  
adopted by the conference to-day, which  
illustrate the dominating spirit of progress  
in the body.  
The first was the increase of the as-  
sessment for educational work from \$30,000  
to \$50,000 per annum, with the distinct pur-  
pose of devoting \$20,000 to the education  
of negro preachers and teachers.  
Other items of the report excited in-  
terest, but the duty and opportunity of  
taking a large part in the development  
of the negro in the South and possibly  
preparing him for missionary service in  
Africa aroused the most enthusiasm.  
The other measure alluded to was an  
amendment to the law which will enable  
the educational commission of the church  
to advance the standards required of in-  
stitutions, desiring to be classed as col-  
leges of the church. The report was  
adopted by a large majority.  
Dr. James Atkins, of the Western North  
Carolina Conference, was elected bishop  
on the twelfth ballot to-night at 10:30  
o'clock, after a most exciting session, and  
after three other men, Dr. J. C. Kilgo,  
Dr. Collins Denny and Dr. W. P. McMur-  
ray had all but received the number of  
number of votes necessary to give them  
the give honor. Dr. Atkins has been  
prominently mentioned for the office since  
the conference first convened, but in the  
heated contest between Dr. Kilgo and  
(Continued on Twelfth Page.)

COL. LAWLESS  
THREATENED  
BY CLOWES

Son Takes Exceptions to  
Remark About His Fa-  
ther, Texas Clowes.

DR. WILLIAMS'  
AWFUL CRUELTY

Witness Tells in Detail of His  
Ducking and Burning Insane  
Patients As Punishment.  
The Day's Evidence  
in Favor of Dr.  
Foster.

(Special From a Staff Correspondent.)  
WILLIAMSBURG, VA., May 17.—  
The sensation of the day in the Eastern  
State Hospital investigation came just  
at the end of the day's proceedings when  
Colonel Lawless arose and addressed the  
committee. He stated that a son of  
Mr. Texas Clowes had approached him  
with threatening language and gesture  
in the grounds of the asylum and had  
demanded what he had meant by calling  
his father "that creature" during the ses-  
sion of the committee.  
Colonel Lawless said that he desired  
to serve notice that he would protect him-  
self in the proper manner from Mr. Texas  
Clowes, who, he said, had killed several  
men, and from his sons and his rela-  
tions.  
Colonel Lawless said he asked the pro-  
tection of no man, but he thought it  
proper to bring to the attention of the  
committee the threats of witnesses.  
Intense Excitement.  
There was intense excitement during the  
short address of the counsel for Dr. Fos-  
ter, for it was felt that the time has  
come when a word may bring on a per-  
sonal difficulty.  
Mr. Texas Clowes said to-night to a  
Times-Dispatch representative that he did  
not intend to have a personal difficulty  
with Colonel Joseph T. Lawless, counsel  
for Dr. Foster, superintendent of the  
Eastern State Hospital.  
Colonel Lawless to-day during the eve-  
ning in alluding to Mr. Texas Clowes,  
spoke of him as "that creature."  
Afternoon Mr. Texas Clowes, son  
of Mr. Texas Clowes, approached Colonel  
Lawless and asked him what he meant  
by his harsh language about his father.  
Colonel Lawless replied that he meant  
exactly what he had said, and informed  
Mr. Peter Clowes that if he was seek-  
ing a difficulty, he could get it "right  
there."  
Mr. Peter Clowes left after using threat-  
ening words and gestures.  
Killed His Man.  
It is said that Mr. Texas Clowes has  
killed his man and Colonel Lawless not-  
ified the investigation committee that he  
would take proper steps to defend him-  
self. It was thought that a personal  
difficulty would certainly follow after the  
statements of Colonel Lawless and Mr. Texas  
Clowes or his son, as the most intense  
excitement prevailed throughout the city.  
Mr. Texas Clowes, however, states that  
there will be no difficulty, for he says, he  
will urge his son to let the matter rest.  
He states that the affair is the outcome  
of politics and the result of his fight  
on Colonel Lawless, when he ran for Con-  
gress from this district of any man, and if  
Colonel Lawless would defend him, he  
would have answered him, but I have  
no idea of having a personal difficulty,"  
said Mr. Clowes.  
Colonel Lawless said that being here in  
Williamsburg, where Mr. Clowes is so well  
known, he has nothing to say further,  
than that he is prepared to stand by his  
plain statement and that there is nothing  
to retract. He says he does not know  
whether Mr. Clowes was for him or  
against him in his campaign for Con-  
gress.

A POLICEMAN FALLS  
OVER A HIGH CLIFF

Negro He Was Pursuing Takes  
Same Fall Without  
Hurt.

(Special to The Times-Dispatch.)  
LYNCHBURG, VA., May 17.—Police-  
man W. C. Metts, while chasing a negro  
early to-night, fell over a cliff near the  
east end of the Rivermont Viaduct, and  
sustained a fracture of his right fore-  
arm, out about the face, and it is feared  
he is hurt internally.  
The negro went over the cliff ahead of  
the officers, and hid himself in the  
Norfolk and Western tunnel, a short  
distance away, apparently not being hurt  
in the fall, which was almost perpendicu-  
lar and forty feet high. The negro is  
wanted on a capias, having been fined  
\$100 in the Police Court a short while  
ago for shooting in the city.



SENATOR JOSEPH W. BAILEY.  
The Texan gives further evidence that compromising statement emanated from  
White House.

DR. STRATTON'S  
REPLY TO DR. LEVY

Mopping of Own Throat Not  
Meant As Joke, But As Means  
to End.

SCHEME TO SET WOMAN FREE

Greatly Surprised to Receive Card  
Saying Diphtheria Bacilli Were  
in His Own Throat.

Dr. Thomas E. Stratton, the city phy-  
sician who leaped into the public gaze a  
week or more ago by his "trick" on Dr.  
E. C. Levy, city bacteriologist, as reported  
by Dr. W. T. Oppenheimer, president of  
the Board of Health in his statement to  
the Council, has agreed to make a state-  
ment of the very interesting and unusual  
matters. Dr. Oppenheimer stated to the  
Council that Dr. Stratton had a patient  
who had the diphtheria. From time to  
time he would mop the throat of his  
patient, and send the bacilli culture to  
Dr. Levy. One day he mopped his own  
throat, and sent the culture to Dr. Levy,  
who returned a card, saying with the  
statement, "unmistakable diphtheria  
bacilli still present." Dr. Oppenheimer  
reported to the Council that Dr. Levy had  
said the patient was "worse," but this is  
erroneous.  
Dr. Stratton owns up to a little scheme  
on his part but declares any desire or  
motive of poking fun at Dr. Levy and  
his department, as Dr. Levy seemed to  
think.

Five Witnesses.

There have been five witnesses on the  
stand to-day, Messrs. Proctor, Powell,  
Baskins and Van Fossen, who have  
served as attendants in the Eastern State  
Hospital, and Mr. Cole, chairman of the  
special board of directors.  
Some startling disclosures have been  
made, but for the most part there is nothing  
new, but a rehash of what  
has been related before.  
Mr. Baskins, a former attendant, testi-  
fied to the cruel treatment of patients by  
Dr. McGuire Williams, who he said  
ducket the poor unfortunate when he was  
in a bad humor and burned them cruelly  
when he was "in a burning humor."  
This witness also testified that Dr. Wil-  
(Continued on Third Page.)

THE RATE BILL  
WILL BE PASSED

The Day Spent in Discussing  
Amendments, But Bill Was  
Not Changed.

UNCONSTITUTIONAL, HE SAYS

Made Speech Which Was De-  
pressing—Upon Advocates of  
Rate Regulation.

(From Our Regular Correspondent.)  
WASHINGTON, D. C., May 17.—  
"Keep those words in the bill, and  
you write 'unconstitutional' across its  
face; eliminate them, and you trans-  
fer to the courts the duty of declar-  
ing the unconstitutionality of the bill."  
These words, uttered by Senator  
Foraker, of Ohio, in the course of the  
rate bill discussion late this afternoon,  
were received in absolute silence by the  
Senate. The incident was the most in-  
teresting of the debate. The words could  
not have been but depressing upon the  
real advocates of the regulation of rates  
by the government.  
Senator Foraker has said more than  
once that the bill is unconstitutional, but  
he had not said it in such impressive  
terms.  
The Bill Will Pass.  
The bill will be passed to-morrow.  
There is little doubt of this. The Sen-  
ate spent the day in discussing various  
amendments, but did not materially  
change the bill. Late this afternoon,  
when the Senate adjourned, the provision  
for review by the courts was under con-  
sideration. It was while this section was  
(Continued on Second Page.)

MRS. DAVIS GETS WORSE  
AND RALLIES AGAIN

She Now Has Pneumonia, and,  
Owing to Advanced Age, Hopes  
of Her Recovery Are Faint.

(Special to The Times-Dispatch.)  
NEW YORK, May 17.—Mrs. Jeffers-  
on Davis was reported much im-  
proved late to-night. Dr. Robert H.  
Wylie said there was no immediate  
danger, although admitting her con-  
dition was still serious. The physi-  
cian said he hoped the worst had  
passed, and there would be a con-  
tinuous improvement.  
(By Associated Press.)  
NEW YORK, May 17.—Mrs. Jefferson  
Davis, wife of the President of the South-  
ern Confederacy, who is ill at the Hotel  
Gerard, suffered a relapse, and early to-  
day her condition was serious. During  
the morning hours resort was had to the  
use of oxygen. About noon Mrs. Davis  
rallied, and the improvement continued  
to-night, the last reports from her bed-  
side being to the effect that she was  
much better.  
Dr. Robert H. Wylie, who is attending  
Mrs. Davis, said to-day that she is now  
suffering from pneumonia, and, owing to  
her advanced age, hopes of her recovery  
are faint.  
Her daughter, Mrs. J. Addison Hayes,  
and her grandchildren, Jefferson Davis  
Hayes, a student at Princeton University,  
and his sister, are almost constantly at  
her bedside.  
Mrs. Davis celebrated her eightieth  
birthday on Monday, two weeks ago. On  
that day she went for a drive, and con-  
tracted a cold.  
(Continued on Third Page.)

SHOWS STORY  
CAME FROM  
WHITE HOUSE

Senator Bailey Makes  
Further Statement.  
Submits Proof.

LETTER OF CHANDLER  
IN SENATOR'S FAVOR

Says He Assured President He  
Need Have No Fear As to At-  
titude of the Texan.

WAS NOT CIRCULATED  
AMONG THE DEMOCRATS

Memorandum is Made Public  
Through Republican Papers  
Said to Have Been Shown  
to Only a Select Few,  
and By President or  
His Secretary.

(From Our Regular Correspondent.)  
WASHINGTON, D. C., May 17.—Senator  
Bailey made a statement in the Senate  
this afternoon, in which he demonstrated  
almost to a certainty that the stories  
sent out from Washington that the Presi-  
dent had desired the Democrats who  
were fighting for a limited court review  
provision in the rate bill because he had  
reason to doubt the loyalty of Senator  
Bailey to that proposition, emanated  
from the White House, if not from the  
President himself.  
His statement of the sequence of events  
leading up to the circulation of the mem-  
orandum sent by the President to the  
President of the Senate, on which the  
President is asserted to base his claim  
of having reason to doubt the sincerity  
of the Texas senator, made it absolutely  
certain that the President uses the  
word "loyalty" as a mere pretext. Days  
after it was received, the President  
made a personal effort to get in com-  
munication with Mr. Bailey sufficiently  
close as to induce him to confer with  
Attorney-General Moody with regard to  
a limited court review provision. It can-  
not be seen from the President's state-  
ment that he sought to induce Mr. Bailey  
to bring about this conference, or that  
he had doubted the sincerity of the  
senator from Texas. The strongest  
portion of the statement by Mr. Bailey  
to-day was his declaration that it was  
inconceivable that the President, with  
what he could prove before him, a  
man's sincerity, should have permitted  
his attorney-general to transmit to him  
the form of agreement on which his  
friends were expected to unite with the  
friends of the man under suspicion.  
A statement from ex-Senator Chandler,  
alluding to the events of yesterday, was  
quoted by Mr. Bailey and helped to  
make his indictment of the President  
all the more terrible.  
Crowd Was Expectant.  
The Senate had spent an hour and a  
half discussing the proposed amend-  
ments to the rate bill before Mr. Bailey  
took the floor. The galleries were crowd-  
ed. There was a flutter of expectation  
when the Texas senator, Representative  
Longworth, the President's son-in-law,  
was one of the congressmen in a seat  
in the rear of the Senator's. He did not  
know, however, that the President was  
under strong suspicion of having mis-  
treated facts.  
Mr. Bailey made some apology for again  
obtruding upon the time of the Senate,  
alluding to the events of yesterday, and  
he denounced the correspondents of the  
Chicago Tribune, and the New York Tri-  
bune, for publications, saying the Presi-  
dent had reason to doubt the good faith  
of the Texan, and then sent to the desk  
the following letter:

"United States Senate,  
"Washington, D. C., May 16, 1906.  
"Hon. William E. Chandler, Wash-  
ington, D. C.  
"My Dear Sir.—Partisan Republican  
newspapers are charging that you have  
at some time written a communication  
to the President or some member of  
his administration impugning my good  
faith in reference to the pending rail-  
road rate bill. I thank you to send me a  
copy of any communication which  
you may have made to the President  
or to any member of his administra-  
tion and which can possibly have been  
made the basis of any such charge.  
"Very respectfully, yours,  
"J. W. BAILEY."  
Senator Chandler's Reply.  
Mr. Bailey then sent to the desk the  
following reply from Mr. Chandler, who  
was sitting next him:  
"Washington, D. C., May 16, 1906.  
"Honorable J. W. Bailey, United States  
Senator:  
"Dear Sir.—I have your letter of to-  
day, and enclosed to you a copy of  
a memorandum sent by me to the White  
House on the morning of Wednesday,  
April 11th. I think the memorandum  
was not dated, but my retained copy  
is dated April 11th. I did not therein  
give the President any assurance as to  
your attitude relative to the so-  
called game, because I had not seen  
you and did not feel authorized by  
anything Mr. Tillman had then said to  
give any assurance. In fact, Mr. Tillman  
had said that Mr. Bailey and yourself  
talked with him fully, and he then told  
me that neither he nor yourself were  
entering into games with the railroad  
senators; and at 3:30 I saw the Presi-  
dent and told him that Mr. Tillman  
had said and that he need have no  
apprehension on the subject. I en-  
closed to you copies from my diary.  
April 13th, I saw Mr. Moody; and  
again on the 14th, and arranged with  
him to see Mr. Tillman and yourself  
on the next day, Sunday, the 15th.  
"Yours truly,  
"WM. E. CHANDLER."

The Memorandum.

Mr. Bailey then had read the follow-  
ing memorandum furnished to the Presi-  
dent by Mr. Chandler:  
"The game of the railroad senators  
is to support Bailey's amendment, and  
induce him to agree to a broad right  
of court review. What that is to be  
is not certain, but the principal ob-  
ject is to beat him, meaning the Presi-  
dent. Mr. Tillman, however, consid-  
ers himself as acting with the